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Attorneys for Defendants  
MIKE'S NOVELTIES, INC.,  
et al.

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

SOLO INDUSTRIES, INC,

Plaintiff

v.

MIKES NOVELTIES, INC., et al.

Defendants

CIVIL ACTION NO. 2:16-cv-00351-RGK-E

Honorable R. Gary Klausner Presiding

JOINT RULE 26(f) REPORT

Scheduling Conference: 8/8/2016  
Time: 9:00 AM  
Courtroom: 850 - Roybal

1 By and through their attorneys of record, who are set forth below, the parties  
2 have prepared and hereby submit this jointly signed Scheduling Conference report  
3 following the conference of counsel required by Federal Rule of Civil Procedures  
4 16(b) and 26(f), Central District Local Rule 26-1 and this Court's Order setting a  
5 Scheduling Conference.  
6

7  
8  
9 **I. Meeting of Parties**

10 Counsel for the parties met telephonically on July 18, 2016, and thoroughly  
11 discussed the issues addressed by Fed. R. Civ. Proc. 26(f) and Local Rule 26-1 and  
12 the Order.  
13

14 **II. Summary of the Case**

15 This is an action for patent infringement, trademark infringement, unfair  
16 business and trade practices, false advertising and counterfeiting in which Plaintiff  
17 seeks injunctive relief and monetary damages. Plaintiff sells a self-igniting pipe –  
18 a device that combines a pipe and a lighter into a single product. Plaintiff owns a  
19 U.S. Trademark Registration No. 3,375,493 for the mark SOLOPIPE, as well as  
20 California Trademark Registration No. 112969 for the mark SOLOPIPE  
21 (collectively the “SOLOPIPE Mark”). Plaintiff also owns U.S. Design Patent No.  
22 D577,150 (the “D‘150 Patent”) titled “Integrated Smoking Implement,” U.S.  
23 Utility Patent No. 7,905,236 (the “‘236 Patent”) titled “Integrated Smoking  
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1 Device,” and U.S. Utility Patent No. 7,753,055 (the “‘055 Patent”) titled  
2 “Integrated Smoking Device” (collectively the “Patents-in-suit”).

3 Plaintiff alleges that the Defendants have had manufactured and sold  
4 counterfeit versions of Plaintiff’s self-igniting pipe. Defendants’ sale of the  
5 counterfeit pipes (1) infringe the SOLOPIPE Mark, (2) constitute unfair business  
6 practices, unfair trade practices and false advertising with respect to the  
7 SOLOPIPE Mark, (3) constitute violations of federal and California law, and (4)  
8 directly and indirectly infringe one or more of the claims of the Patents-in-suit.  
9

10 Defendants have filed an answer in which Defendants (1) deny infringing  
11 any of the Patents-in-suit or the SOLOPIPE Mark, (2) deny the validity of the  
12 Patents-in-suit, and (3) deny all allegations of unfair business practices, unfair  
13 trade practices, false advertising and counterfeiting.  
14

### 15 **III. Discovery Plan**

16  
17 **A.** The parties agreed that no changes were necessary in the timing, form,  
18 or requirement for disclosures under Rule 26(a), and that they would exchange  
19 disclosures on August 22, 2016.  
20

21  
22 **B.** The parties agreed that discovery was needed on issues concerning  
23 patent infringement, trademark infringement, unfair trade practices, counterfeiting  
24 and validity of damages, and that discovery need not be conducted in phases. The  
25 Plaintiff proposes that discovery be completed by February 20, 2017. Defendants  
26 propose that discovery be completed by May 1, 2017.  
27  
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1           **C.** Given that this case involves three (3) patents at issue, Defendants  
2 propose that the parties be bound by the Northern District of California Patent  
3 Local Rules and that discovery and disclosures be conducted accordingly. Plaintiff  
4 does not agree that the Northern District of California Patent Local Rules are  
5 necessary or even helpful in this case. Although there are three patents at issue,  
6 they are not highly technical and any claim construction, if necessary, will not be  
7 complex. Moreover, Plaintiff has reason to believe that, once it receives responses  
8 to its initial discovery requests, this action will become a simple counterfeiting  
9 case with the patent infringement claims being dismissed.  
10

11           **D.** The parties discussed the disclosure of electronically stored  
12 information.  
13

14           **E.** The Plaintiff believes that privileged communications and work  
15 product of trial counsel need not be included in a privilege log. The Defendants  
16 believe that such information should be included in a privilege log.  
17

18           **F.** The parties agreed that no changes should be made in the limitations  
19 on discovery imposed under the Federal Rules or by local rule.  
20

21           **G.** The parties anticipate entering into an appropriate stipulated  
22 protective order within the next 30 days in order to allow for the exchange of  
23 confidential and/or sensitive information, and to commence formal discovery  
24 following the filing of this report.  
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1 **IV. Local Rule 26-1 Issues**

2 **A. *Complex Cases.*** The parties agreed that Manual For Complex  
3 Litigation need not be utilized.  
4

5 **B. *Motion Schedule.*** The parties anticipate the filing of motions for  
6 summary judgment and/or partial summary judgment. The Plaintiff proposes a  
7 deadline of March 6, 2017 to file such motions.  
8

9 **C. *Settlement.*** The parties have agreed to discuss settlement and propose  
10 settlement procedure No. 1.  
11

12 **D. *Trial Estimate.*** The Plaintiff estimates a 1-2 day trial. The  
13 Defendants estimate a 5-7 day trial.

14 **E. *Additional Parties.*** The parties discussed the possible appearance of  
15 additional defendants and agreed to a deadline to file motions to add parties of  
16 October 10, 2016.  
17

18 **F. *Expert Witnesses.*** The Plaintiff proposes a December 19, 2016,  
19 deadline to serve opening expert reports on the issues on which each party bears  
20 the burden of proof and a January 23, 2017, deadline to serve rebuttal expert  
21 reports. The Defendants have proposed no deadlines with respect to expert  
22 witnesses or disclosures.  
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**Proposed Schedule**

<b>Event</b>	<b><u>Plaintiff's Proposed Date/Deadline</u></b>	<b><u>Defendants' Proposed Date/Deadline</u></b>
Initial disclosures	Aug. 22, 2016	Aug. 22, 2016
Disclosure of Asserted Claims and Infringement Contentions	None <sup>1</sup>	Aug. 22, 2016
Invalidity Contentions	None	Oct. 6, 2016
Last day to file motion to amend pleadings to add parties	Oct. 10, 2016	Oct. 10, 2016
Exchange of Proposed Terms for Construction	None	Oct. 20, 2016
Exchange of Preliminary Claim Constructions	None	Nov. 10, 2016
Joint Claim Construction and Prehearing Statement	None	Dec. 5, 2016
Opening expert reports on issues on which parties bear burden of proof	Dec. 19, 2016	
Completion of Claim Construction Discovery	None	Jan. 4, 2017
Claim Construction Briefs	None	Jan. 19, 2017
Rebuttal expert reports	Jan. 23, 2017	
Opposition Briefs	None	Feb. 2, 2017
Reply Briefs	None	Feb. 9, 2017
Discovery cutoff	Feb. 20, 2017	May 1, 2017
Claim Construction Hearing	None	Feb. 27, 2017

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<sup>1</sup> Plaintiff is aware that this Court does not generally include patent-specific deadlines in its scheduling orders, and Plaintiff proposes none here. Moreover, as explained in Section III.C. above, the patents at issue here are not highly technical and there is a likelihood that the patent infringement claims will be dropped based upon early discovery responses from the Defendants. Nevertheless, should the Court choose to adopt such patent-specific deadlines, Plaintiff requests that no such deadlines occur before the parties have a reasonable amount of time for discovery.

<b>Event</b>	<b><u>Plaintiff's Proposed Date/Deadline</u></b>	<b><u>Defendants' Proposed Date/Deadline</u></b>
Motion cutoff (last day to file motions)	Mar. 6, 2017	May 29, 2017
Pretrial Conference	May 8, 2017	Aug. 7, 2017
Trial	May 22, 2017	Aug. 21, 2017

DATED this 1st day of August, 2016

/s/ Kevin R. Behrendt  
 KEVIN R. BEHRENDT  
 Attorney for Plaintiff  
 SOLO INDUSTRIES, INC.

DATED this 1st day of August, 2016

/s/ Louis F. Teran  
 LOUIS F. TERAN  
 Attorney for Defendants  
 MIKE'S NOVELTIES, INC., et al.

ATTESTATION OF CONCURRENCE IN FILING

I hereby attest and certify that on August 1, 2016, I received concurrence from Defendants' counsel, Louis F. Teran, to file this document with his electronic signature attached.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on August 1, 2016.

/s/ Kevin R. Behrendt  
 Kevin R. Behrendt